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Attorneys for Defendants

VXN GROUP LLC and MIKE MILLER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MACKENZIE ANNE THOMA,
a.k.a. KENZIE ANNE, an
individual and on behalf of all
others similarly situated,

Plaintiff,

v.

VXN GROUP, LLC, a Delaware
limited liability company; MIKE
MILLER, an individual; and DOES
1 to 100, inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGR_x)**

**DEFENDANTS VXN GROUP, LLC
AND MIKE MILLER'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT**

[Filed concurrently with: (1) Joint Brief;
(2) Joint Appendix of Facts; (3) Joint
Appendix of Evidence (Vol. I-IV); (4)
Joint Appendix of Objections; and (5)
Proposed Order]

Date: February 28, 2025

Time: 11:00 a.m.

Courtroom: 9B

**DEFENDANTS VXN GROUP, LLC AND MIKE MILLER'S NOTICE OF
MOTION AND MOTION FOR SUMMARY JUDGMENT**

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 28, 2025 at 11:00 a.m., or as
3 soon thereafter as the matter may be heard, in Courtroom 9B, 9th Floor, of the
4 above-entitled court located at the First Street Courthouse, 350 W. 1st Street,
5 Los Angeles, CA 90012, Defendants VXN Group, LLC (“VXN”) and Mike
6 Miller (“Miller”) (collectively, “Defendants”) will and hereby do move
7 (“Motion”) for full summary judgment pursuant to the Federal Rules of Civil
8 Procedure, Rule 56.

9 Defendants bring this Motion on the ground that there is no genuine
10 dispute as to any material fact, and Defendants are entitled to judgment as a
11 matter of law as to all of Plaintiff’s claims based on the following issues:

- 12 A. Industrial Welfare Commission Order No. 12-2001, Cal.
13 Code Regs. tit. 8, § 11120 (“Wage Order 12”) governs any
14 alleged employment relationship between Plaintiff
15 Mackenzie Anne Thoma (“Plaintiff”) and Defendants
16 because VXN is in the motion picture industry.
- 17 B. Plaintiff is a professional actor. Because Wage Order 12
18 exempts professional actors from its overtime, meal period,
19 rest period, and wage statement requirements (Cal. Code
20 Regs. tit. 8, § 11120(1)(C)), Defendants are entitled to
21 summary judgment on Plaintiff’s corresponding claims.
- 22 C. Because of Plaintiff’s status as an exempt professional actor,
23 she has no remaining claims rooted in a wage order.
24 Therefore, Plaintiff’s employment status with respect to any
25 remaining claim is governed by *Borello*.
- 26 D. Under *Borello*, Plaintiff is an independent contractor as a
27 matter of law. Accordingly, Defendants are entitled to
28

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summary judgment as to her waiting time penalty claim.

This Motion is based on this Notice of Motion, the accompanying Joint Brief, Joint Appendix of Facts, Joint Appendix of Evidence (Vol. I-IV), Joint Appendix of Objections, the pleadings and papers on file, and upon such other matters as may be presented to the Court at the time of hearing.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on December 11, 2024. On that date, Defendants' counsel met with Plaintiff's counsel by Zoom videoconference and thoroughly discussed each issue to be raised in Defendants' motion for summary judgment. Ultimately, the conference did not yield an agreement, so Defendants move the Court for a determination of the above-listed issues.

Dated: January 10, 2025

By:

KANE LAW FIRM

/s/ Brad S. Kane

Brad S. Kane

Trey Brown

Counsel for Defendants

VXN Group, LLC and Mike Miller